

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
)	
Revision of the Commission's Rules)	CC Docket No. 94-102
To Ensure Compatibility with Enhanced 911)	
Emergency Calling Systems)	

**PETITION OF ACS WIRELESS FOR EXTENSION
OF WAIVER OF 47 C.F.R. § 20.18(c) REQUIREMENTS**

ACS Wireless, Inc. ("ACSW"), pursuant to 47 C.F.R. § 1.3 and § 1.925, hereby petitions the Federal Communications Commission ("FCC" or "Commission") to extend the waiver of its TTY Access to 911 Services Rules set forth in 47 C.F.R. § 20.18(c) ("TTY rules"). The Commission previously granted ACSW a conditional waiver from application of the TTY rules, until December 31, 2003, in light of ACSW's migration away from its TDMA network.¹ ACSW has made significant progress towards building and deploying its TTY-compliant CDMA network and anticipates that the network will be operational very soon. Indeed, ACSW expects to begin making its CDMA network commercially available within the next two months, with the network operational for over 90% of its subscribers by the end of June 2004. Nevertheless, it has encountered unforeseen delays and thus seeks a slight extension of the waiver to match deployment of its CDMA network.

ACSW also seeks permission from the Commission to keep its limited TDMA network operational without a TTY compatible solution until February 18, 2008 in order to comply with

¹ See *Order*, In the matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, 17 FCC Rcd. 12084 (June 28, 2002) ("*2002 Order*").

the Commission's analog service sunset rule since consumers would not be served by shutting it down. Because any consumer TTY requirement will be met with the CDMA network, there would be no harm in maintaining the TDMA network.

BACKGROUND AND INTRODUCTION

ACSW is a small regional wireless carrier serving Alaska and currently provides wireless telecommunications over a TDMA and AMPS network. In April 2002, ACSW filed a Petition For Waiver of 47 C.F.R. § 20.18(c), seeking a waiver of the TTY rules since it was in the process of transitioning to a CDMA network that would satisfy the Commission's TTY requirements.² In light of ACSW's limited financial resources, movement of the industry away from TDMA technology, and the limited commercial availability of potential solutions, deployment of TTY-compatible equipment on both its TDMA and CDMA networks would not have been economically feasible. In its *2002 Order*, the Commission acknowledged that it made little sense for companies that were migrating to CDMA networks to expend resources on interim solutions for their TDMA networks over a transition period.³ Thus, the Commission granted certain carriers, including ACSW, a conditional waiver of the TTY rules until December 31, 2003.⁴ The *2002 Order* further required that the carriers either implement TTY capability on their TDMA networks by that date or turn them off.⁵

ACSW has made substantial progress toward building and deploying its CDMA network which will support TTY capabilities as well as comply with the Commission's E911 requirements. ACSW expects to complete deployment of its CDMA network in major

² See ACS Wireless Petition For Waiver Of 47 C.F.R. § 20.18(c), CC Docket No. 94-102 (April 18, 2002).

³ See *2002 Order* at ¶ 21.

⁴ *Id.* at ¶ 22.

⁵ *Id.*

population areas of Alaska in 2004 and is committed to migrating its TDMA customers to this system as soon as possible. Nevertheless, ACSW has encountered unique challenges in building a vast infrastructure in the State of Alaska which have resulted in delays to deployment of the network. Accordingly, ACSW seeks an extension of its waiver from the TTY rules in accordance with its timetable for deployment as described more fully below.

In addition, ACSW seeks permission to maintain operation of its TDMA network without TTY capabilities, even after its CDMA network is deployed. Because none of ACSW's TDMA subscribers have requested TTY compatibility and because any TTY requests can be satisfied with CDMA or analog technology no one would be harmed by maintenance of the TDMA network. On the other hand, many interests would be served by continued operation of the network, since the TDMA network will serve the most rural parts of the state. These customers will have the opportunity to continue digital service.

DISCUSSION

ACSW chose to migrate to CDMA technology because of its vastly superior capabilities which will enable ACSW to expand and enhance services available in Alaska. Due to the vast geography and dispersed population of Alaska, deployment of this network has proven to be a costly and time-consuming initiative for ACSW, but ACSW continues to view this upgrade as a key step in its mission to improve service to Alaska consumers. Although ACSW has made substantial progress in building its CDMA network, the unique challenges of building extensive network infrastructure in Alaska have resulted in unforeseen delays in deployment. In addition, limited commercial availability and significant financial costs continue to make deployment of a TTY solution on the TDMA network unduly burdensome. Accordingly, ACSW seeks the instant extension of waiver.

I. Standard For Waiver

The Commission has recognized that in certain situations, such as when technology-related issues or other exceptional circumstances arise, the Commission may waive its rules.⁶ Generally, the Commission's rules may be waived for good cause shown.⁷ Further, waiver is appropriate if special circumstances warrant a deviation from the rules and such a deviation will serve the public interest.⁸ Special circumstances include unusual factual circumstances that make application of the rule(s) inequitable or unduly burdensome, or when an applicant for waiver has no reasonable alternative to enable compliance with the rule(s).⁹ As described more fully below, ACSW's request for waiver meets any and all of these standards.

II. ACSW Has Made Substantial Progress In Deployment Of Its TTY-Compliant CDMA Network

As described more fully in its Petition for Limited Waiver and Forbearance of the Commission's Phase II E911 rules, ACSW has encountered some delays in deployment of its CDMA network, due to the unique challenges of building a network in Alaska.¹⁰ Nevertheless, ACSW has made substantial progress in construction and continues to devote significant resources to achieving deployment as soon as possible. Although deployment of a CDMA

⁶ See *Fourth Report and Order*, In the Matter of Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, 15 FCC Rcd. 25216 (December 28, 2000) ("*Fourth Report and Order*") at ¶ 43.

⁷ *Id.*; see also 47 C.F.R. § 1.3.

⁸ *Id.*

⁹ See 47 C.F.R. § 1.925(b)(3)(ii).

¹⁰ See ACS Wireless Petition for Limited Waiver and Forbearance, CC Docket No. 94-102 (November 17, 2003) ("ACSW E911 Petition"). The ACSW network spans an enormous area throughout Alaska, encompassing coastal areas, mountain ranges, rainforest, glaciers, and tundra, all with different climates, geography, and demographics. Alaska is very sparsely settled, with small villages and communities that are often spread many hundreds of miles apart and, in many cases, are inaccessible by road. The area covered by ACSW's network includes very remote and rural locations, including areas that experience extreme weather conditions for much of the year. For example, Fairbanks, which is one of the three largest Alaska markets, includes areas above the Arctic Circle and vast stretches of frozen tundra, mountain ranges, and

network has proven to be exceptionally expensive for ACSW, it will enable ACSW to provide Alaskans with the most up to date technology while complying with the Commission's regulations.

To date, ACSW has:

- Completed construction of the 32 sites that will comprise the first phase of the CDMA network;¹¹
- Spent almost \$18 million on building the CDMA network thus far; expects to spend more than \$15 million in 2004;¹²
- Installed major equipment in Anchorage, including a CDMA-based switch as well as a Home Location Register ("HLR") that operates to verify customer information and assist in managing both TDMA and CDMA systems;
- Completed testing of the HLR and expects full migration of its customers to be completed by January 2004;
- Completed negotiations with a hardware vendor on construction of the network; contracted with vendor for full completion of project;
- Resolved virtually all outstanding permitting and other local regulatory issues, including all necessary applications, as well as private negotiations of leases;
- Implemented a new billing and SMS system as well as other back-office functionalities to handle transfer to CDMA network; and
- Conducted substantial training of ACSW technicians and engineers for transition to and continued maintenance of the CDMA network.

ACSW has completed the buildout of a significant portion of its CDMA network and is currently conducting tests of the system. ACSW expects to commercially offer its CDMA

roadless expanses. Winter in this area begins in September and lasts until late May. These circumstances have proven to be a tremendous challenge to the rapid deployment of the CDMA network.

¹¹ Of the 32 sites, 20 are collocated and 12 are new; progress in construction varies site by site.

¹² ACSW spent approximately \$4.5 million in 2002 and will have spent approximately \$13.1 million by the end of 2003; although not yet finalized, ACSW is budgeting over \$15 million for 2004.

network in Anchorage and Matanuska Valley by February of 2004 (where it will reach half of ACSW's subscribers and half the population of Alaska), in Fairbanks, Juneau, and the Kenai Peninsula by June 30, 2004 (achieving coverage of over 90% of ACSW's subscribers), and in its remaining service areas, including remote locations and sparsely populated areas, by December 31, 2005.¹³

III. ACSW Should Not Be Required To Shut Down Its TDMA Network

Allowing ACSW To Maintain Its TDMA Network Would Be In The Public Interest

There would be nothing gained, but much lost, if ACSW is required to shut down its TDMA network. Once deployed, the CDMA network will support TTY functions. Therefore, if an individual needs wireless TTY capabilities, he or she will be able to obtain a new CDMA handset for that function as CDMA is deployed.¹⁴ Accordingly, because individuals who require TTY capabilities may meet their needs through CDMA or analog equipment, no one will be harmed by keeping the TDMA system operational. It is worth noting that, to date, ACSW has not received any requests from TDMA subscribers seeking TTY compatibility.

Additionally, it is important that ACSW keep its TDMA network operational for several more years after the CDMA network is deployed. First, the TDMA network serves as ACSW's analog network, which ACSW is required by the Commission to maintain.¹⁵ Second, although ACSW is attempting to migrate its subscribers to the CDMA network as soon as possible, there

¹³ The sparsely populated areas of ACSW's planned CDMA network deployment include Klawock (pop. 854), Wrangell (2,308), Petersburg (3,224), Manley (72), Glennallen (554), and Tok (1,393); its remote locations include areas that are highly difficult to access, including Cape Spencer Lighthouse in the Glacier Bay National Park and Preserve, and the Funter Bay State Marine Park that is accessible only by water or air. ACSW is committed to extending its coverage to even the most remote areas possible in the interest of public safety.

¹⁴ Indeed, ACSW is committed to providing a substantial discount off regular retail prices for phones, activation, and other fees for qualified individuals to ensure accessibility.

will inevitably be subscribers who are satisfied with their service and will continue to use their TDMA handsets as long as possible without upgrading to CDMA. By requiring ACSW to shut down its TDMA network, the Commission would essentially mandate that all of ACSW's subscribers purchase new handsets in order to maintain service. Such a scenario would harm consumer choice and, with no offsetting benefit, would be against the public interest.

Denial Of Waiver Would Be Unduly Burdensome

The *2002 Order* provides that even when ACSW's TTY-compatible CDMA system is fully deployed, the TDMA network must be shut down unless it is also made TTY compliant. However, for the same reasons that justified the original grant of waiver, this option remains an unrealistic option. It simply makes no sense to require ACSW to make significant capital expenditures on a network that the entire industry is moving away from, particularly when it would serve no purpose.

Although, as the Commission notes, there are some products commercially available, the limited number of options for making TDMA networks TTY-compliant continue to make this adaptation expensive. ACSW has investigated the handset solutions that have been discussed on the record. However, ACSW can only use handsets that are manufactured by its TDMA switch vendor. No other vendor's handsets will work on its system. ACSW has consulted its vendor on the costs of adding software to its switch to make its TDMA network TTY-compatible and received an estimate of almost \$1 million. To a small rural provider like ACSW, that cost represents a significant expenditure. ACSW already plans on spending more than \$2 million in 2004 on its TDMA network for compliance with number portability requirements, representing

¹⁵ See Public Mobile Services and Personal Communications Services Rule, 67 Fed. Reg. 77,175 (Dec. 17, 2002) (to be codified at 47 C.F.R. pt. 22).

almost one-fifth of its capital budget. To require another \$1 million be spent on achieving a capability that is not needed does not make sense.

ACSW's subscribers are better served by ACSW using its limited resources to, among other things, improve existing services as well as comply with the Commission's other mandates. The Commission granted ACSW's original waiver petition, in part, because it recognized that "to expend a large sum of money on what would essentially be an interim solution does not seem a good allocation of resources."¹⁶ That remains the case now. To require ACSW to upgrade its TDMA network at a significant cost, with no benefits to consumers, would be unduly burdensome.

IV. Specific Relief Sought

For the reasons stated above, ACSW requests an extension of the waiver of the TTY compliance rules in accordance with the timetable for deployment of its CDMA network as follows:

- Phase I: TTY waiver extended to expected Phase I completion date of February 28, 2004; coverage of Anchorage and Matanuska Valley; this area represents over 50% of Alaska's population and over 50% of ACSW's subscriber base;
- Phase II: TTY waiver extended to expected Phase II completion date of June 30, 2004; coverage of all other major population centers, including Fairbanks, Juneau, and the Kenai Peninsula; with this addition, the CDMA system will cover over 75% of Alaska's population and over 90% of ACSW's subscriber base; and
- Phase III: TTY waiver extended to expected Phase III completion date of December 31, 2005; this addition will complete the remaining coverage areas, including more remote locations and smaller-populated communities.¹⁷

¹⁶2002 Order at ¶ 21.

¹⁷See Fn 13, above, for a description of these locations.

In addition, ACSW seeks a waiver to allow continued operation of its TDMA network without TTY capabilities until February 18, 2008 so that it may keep its analog network operational through the period required by the Commission's rules.

CONCLUSION

Based on the foregoing, a limited waiver of the Commission's TTY rules would serve the public interest. ACSW respectfully requests that the Commission grant the instant waiver petition.

Respectfully submitted on this 24th day of December, 2003.

ACS Wireless, Inc.

By: Elisabeth H. Ross
Ho Sik Shin
Birch Horton Bittner & Cherot
1155 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20036
(202) 659-5800
(202) 659-1027 (Facsimile)

Counsel for ACS Wireless, Inc.